

House Bill 1353 (AS PASSED HOUSE AND SENATE)

By: Representatives Collins of the 27th, Austin of the 10th, and Allison of the 8th

A BILL TO BE ENTITLED
AN ACT

1 To create the White County Building Authority; to provide for a short title and legislative
2 findings; to confer powers and impose duties on the authority; to provide for the membership
3 and appointment of members of the authority and their terms of office, qualifications, duties,
4 powers, and compensation; to provide for vacancies, organization, meetings, and expenses;
5 to provide for definitions; to provide for revenue bonds and their negotiability and sale and
6 the use of proceeds from such sales; to provide for considerations for issuance; to prohibit
7 the pledge of credit for the payment of bonds; to provide for trust indentures and a sinking
8 fund; to provide for payment of bond proceeds; to provide for bondholder remedies and
9 protection; to provide for refunding bonds; to provide for bond validation; to provide for
10 venue and jurisdiction; to provide for trust funds; to provide for the authority's purpose; to
11 provide for charges; to provide for rules and regulations; to provide for tort immunity; to
12 provide for tax exemptions and exemptions from levy and sale; to provide for supplemental
13 powers; to provide for effect on other governments; to provide for liberal construction; to
14 provide for severability; to provide an effective date; to provide for related matters; to repeal
15 conflicting laws; and for other purposes.

16 BE IN ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 SECTION 1.

18 This Act shall be known and may be cited as the "White County Building Authority Act."

19 SECTION 2.

20 There is created a body corporate and politic to be known as the White County Building
21 Authority, which shall be deemed to be a public corporation by that name, style, and title.
22 Such corporation shall be separate and distinct from any public corporation heretofore
23 created by the General Assembly and shall be an instrumentality of the State of Georgia
24 exercising governmental powers. All property owned by such corporation shall be public
25 property held and owned for governmental purposes and shall be exempt from taxation.

SECTION 3.

The authority shall have the power:

- (1) To hold, own, and convey real and personal property;
- (2) To sue and be sued;
- (3) To have and to use a seal and to alter the same at pleasure;
- (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell any project as hereinafter defined;
- (5) To exercise the powers conferred upon a "public corporation" or a "public authority" by Article IX, Section III, Paragraph 1 of the Constitution of Georgia, such authority being expressly declared to be a "public corporation" or a "public authority" within the meaning of such provision of the Constitution of Georgia;
- (6) To acquire in its own name by purchase on such terms and conditions and in such manner as it may deem proper. If the authority shall deem it expedient to construct any project on real property which is subject to the control of White County, Georgia, White County, Georgia, shall be authorized to convey such real property to the authority for such consideration as may be agreed upon by the authority and White County, Georgia, taking into consideration the public benefit to be derived from such conveyance;
- (7) To accept gifts and bequests for its corporate purposes;
- (8) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix their compensation;
- (9) To make and execute with public and private persons and corporations contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to its projects and incident to the exercise of the powers of the authority, including contracts for constructing, renting, leasing, and selling its projects for the benefit of White County, Georgia; and, without limiting the generality of the foregoing, authority is specifically granted to White County, Georgia, to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements with the authority for a term not exceeding 50 years;
- (10) To sell or assign its rights under its contracts, lease agreements, or installment sale agreements or its right to receive payments thereunder, either directly or through trust or custodial arrangements whereby interests are created in such contracts, lease agreements, or installment sale agreements or the payments to be received thereunder through the issuance of trust certificates, certificates of participation, custodial receipts, or other similar instruments;

(11) To accept loans and grants of money or property of any kind from the United States, entities created by the United States, privately held entities, the State of Georgia, or any political subdivision of the State of Georgia;

(12) To borrow money for any of its corporate purposes and to issue revenue bonds payable solely from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rent, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such revenue bonds; and

(13) To make such rules and regulations governing its members, agents, contractors, employees, and property as it may in its discretion deem proper.

SECTION 4.

The authority shall consist of five members who shall be legal residents of White County, Georgia, and who shall be appointed in this fashion: one member appointed by the White County Planning Commission who shall be a member of said planning commission and who shall serve as the chairperson of the authority; one member from among the White County Board of Commissioners who shall be appointed by said board; and three members who shall be appointed by the Board of Commissioners. Upon full membership, the terms of the members of the authority shall be assigned as two members to serve for three years, two members to serve for two years, and one member to serve for one year. Members may be appointed to succeed themselves. Three members of the authority shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority, and, in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds. The authority shall elect a secretary and treasurer who need not necessarily be a member of the authority. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this Act or impair the obligations of any contracts existing under this Act.

SECTION 5.

(a) As used in this Act, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Authority" means the White County Building Authority created in Section 2 of this Act.

(2) "Cost of the project" shall include the cost of construction, the cost of all lands, properties, rights, easements, and franchises acquired, the cost of buildings, improvements, materials, labor, and services contracted for, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after the completion of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses, cost of plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project, administrative expenses, and such other expenses as may be necessary or incident to financing herein authorized, the acquisition, construction, renovation, reconstruction, or remodeling of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds issued under the provisions of this Act for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sale agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(3) "Project" shall mean and include real and personal property, including buildings and related facilities and equipment, which are necessary or convenient for the efficient operation of White County, Georgia.

(4) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms of this Act and Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

(b) Any project shall be deemed "self-liquidating" if, in the judgment of the authority, the revenues and earnings to be derived by the authority therefrom and all properties used, leased, and sold in connection therewith will be sufficient to pay the cost of operating, maintaining, and repairing the project and to pay the principal of and interest on the revenue bonds which may be issued to finance, in whole or in part, the cost of such project or projects.

SECTION 6.

The authority shall have power and is authorized from time to time to provide by resolution for the issuance of negotiable revenue bonds in the manner provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purposes of paying all or any part of the cost of any one or more projects, including the cost of constructing,

reconstructing, equipping, extending, adding to, or improving any such project, or for the purpose of refunding, as herein provided, any such bonds of the authority previously issued. The principal of and interest on such revenue bonds shall be payable solely from such part of the revenues and earnings of such project or projects as may be designated in the resolution of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each issue shall be issued and validated under and in accordance with the provisions of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

SECTION 7.

All revenue bonds issued under the provisions of this Act shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state. Such bonds are declared to be issued for essential public and governmental purpose, and such bonds and the income thereof shall be exempt from all taxation within this state.

SECTION 8.

Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge of the faith and credit of the state or Georgia or of White County, Georgia, but such bonds shall be payable solely from such part of the revenues and earnings of such project or projects as may be designated in the resolution of the authority authorizing the issuance of such bonds. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the State of Georgia or White County, Georgia, to levy or to pledge any form of taxation whatever for the payment thereof. No holder of any bond or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of the State of Georgia or White County, Georgia, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any such property. All such bonds shall contain on their face a recital setting forth substantially the foregoing provisions of this section. White County, Georgia, however, may obligate itself to pay the amounts required under any contract entered into with the authority from funds received from taxes to be levied and collected for that purpose to the extent necessary to pay the obligations contractually incurred with the authority and from any other source; and the obligation to make such payments shall constitute a general obligation and a pledge of the full faith and credit of White County, Georgia, but shall not constitute a debt of White County, Georgia, within the meaning of the Constitution of the State of Georgia, Article IX, Section V, Paragraph 1; and, when White County, Georgia, contracts with the authority to make such payments from taxes to be levied for that purpose, then the obligation shall be

mandatory to levy and collect such taxes from year to year in an amount sufficient to fulfill and fully comply with the terms of such contract.

SECTION 9.

In the discretion of the authority, any issue of such revenue bonds may be secured by a trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the sale or lease, from time to time, of any project. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition and construction of any project, the maintenance, operation, repair, and insurance of any project, and the custody, safeguarding, and application of all monies, including the proceeds derived from the sale or lease of any project, and may also provide that any project shall be acquired and constructed under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefore and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other monies be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds pledging all or any part of the revenues and earnings of such project or projects may be issued. Such indenture may set forth the rights and remedies of the bondholders and of the trustee. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 10.

The revenues, fees, tolls, and earnings derived from any particular project or projects, regardless of whether or not such revenues, fees, tolls, and earnings were produced by a particular project for which bonds have been issued, and any monies derived from the sale of any properties, both real and personal, of the authority, unless otherwise pledged and allocated, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust indenture may provide, and such funds so pledged, from whatever source

received, which such pledge may include funds received from one or more or all sources not previously pledged and allocated, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund, which such sinking fund shall be pledged to and charged with the payments of:

- (1) The interest upon such revenue bonds as such interest shall fall due;
- (2) The principal of the bonds as the same shall fall due;
- (3) The necessary charges of any paying agent or agents for paying principal and interest; and
- (4) Any premium upon bonds retired by call or purchase.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds issued pursuant to such resolution or trust indenture without distinction or priority of one over another.

SECTION 11.

The authority shall be authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon and any premium required for the payment of such bonds prior to maturity. The issuance of such revenue bonds and all the details thereof, the rights of the holders thereof, and the duties of the authority with respect to the same shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

SECTION 12.

The principal office of the authority shall be in White County, Georgia, and the venue of any action against it shall be in White County. Any action pertaining to the validation of any bonds issued under the provisions of this Act and for the validation of any contract entered into by the authority shall be brought in the Superior Court of White County, and such court shall have exclusive original jurisdiction of such actions. Service upon the authority of any process, subpoena, or summons shall be effected by serving the same personally upon any member of the authority.

SECTION 13.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," as the same now exists or may hereafter be amended. The petition

for validation shall also make a part defendant to such action White County, Georgia, if such county has or will contract with the authority with respect to the project for which bonds are to be issued and are sought to be validated, and White County, Georgia, shall be required to show cause, if any exists, why such contract and the terms thereof be determined and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds against the authority, and the validity of the contract and of the terms and conditions thereof, when validated, and the judgment of the validation shall be final and conclusive against White County, Georgia, if it be a party to the validation proceeding as herein provided for.

SECTION 14.

While any of the bonds issued by the authority or any interests in contracts of the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such bonds or such interests in contracts of the authority. The provisions of this section shall be for the benefit of the authority and of the holders of any such bonds and interests in contracts of the authority and, upon the issuance of bonds or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or such interests in contracts of the authority.

SECTION 15.

All monies received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or contracts of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act.

SECTION 16.

The authority shall be authorized to prescribe and fix and collect rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of its projects, and to determine the price and terms at and under which its projects may be sold.

SECTION 17.

The exercise of the powers conferred upon the authority hereunder shall constitute an essential governmental function for a public purpose, and the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority. The tax exemption herein provided shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

The authority shall have the same immunity and exemption from liability for torts and negligence as the State of Georgia, and the officers, agents, and employees of the authority, when in performance of work of the authority, shall have the same immunity and exemption from liability for torts and negligence as officers, agents, and employees of the State of Georgia. The authority may be sued the same as any private corporation on any contractual obligation of the authority.

SECTION 19.

The property of the authority shall not be subject to levy and sale under legal process.

SECTION 20.

The scope of the authority's operation shall be limited to the territory embraced within the territorial limits of White County, as the same now or may hereafter exist.

SECTION 21.

This Act shall not in any way take away from the authority any power which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

The authority shall not have the right to impose any tax on any person or property.

SECTION 23.

This Act shall be liberally construed to effect the purposes thereof.

294 **SECTION 24.**

295 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
296 unconstitutional or invalid, the same shall not affect the remainder of this Act or any part
297 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall
298 remain in full force and effect, and it is the express intention of this Act to enact each
299 provision of this Act independently of any other provision hereof.

300 **SECTION 25.**

301 This Act shall become effective upon its approval by the Governor or upon its becoming law
302 without such approval.

303 **SECTION 26.**

304 All laws and part of laws in conflict with this Act are repealed.